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AUG
CHARLES

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 299

STOCKHOLDERS OF HAGERSTOWN BANK AND TRUST COMPANY,

Appellants,

vs.

WARREN F. STERLING, RECEIVER FOR HAGERSTOWN BANK AND TRUST COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

ELIAS B. HARTLE,
ROBT. H. MCCAULEY,
J. LLOYD HARSHMAN,
Counsel for Appellee.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction and motion to dismiss	1

Cases Cited.

Murphy v. Wheatley, 102 Md. 501	3

Statutes Cited.

Acts of Congress, June 3, 1864, c. 106, par. 12	4
Acts of Congress, December 13, 1913, c. 6, par. 23	4
Acts of General Assembly of Maryland of 1904, Chapter 101	2
1908, Chapter 133	2
1908, Chapter 410	2
Act of General Assembly of Maryland of 1910, Chapter 219	2
Code of Maryland 1924, Article 11, Section 72	4, 5
U. S. Revised Statutes, Section 5151	4

IN THE COURT OF APPEALS OF MARYLAND

OCTOBER TERM, 1935

GENERAL DOCKET No. 62

JOHN J. GHINGHER, BANK COMMISSIONER FOR THE STATE OF MARYLAND, RECEIVER FOR HAGERSTOWN BANK AND TRUST COMPANY,

vs.

STOCKHOLDERS OF HAGERSTOWN BANK AND TRUST COMPANY, A BODY CORPORATE.

STATEMENT OF APPELLEE, JOHN J. GHINGHER, BANK COMMISSIONER FOR THE STATE OF MARYLAND, RECEIVER FOR HAGERSTOWN BANK AND TRUST COMPANY, AS TO JURISDICTION.

The appellee contends that there is involved in this case no question of the validity of a statute on the ground of its being repugnant to the Constitution of the United States, although such an argument was made when the case was heard in the Court of Appeals of Maryland.

The basis of the contention of the appellee is a follows:

1. UNDER THE ADMITTED FACTS OF THE CASE NO CONSTITUTIONAL QUESTION AS TO THE RIGHTS OF STOCKHOLDERS OR DEPOSITORS COULD BE INVOLVED, FOR THE FOLLOWING REASONS:

(a) The statute in question, in so far as the same determines the liability of stockholders of banks doing a trust

business, has been in force in Maryland since March, 1904, in identical terms as the statute which is now in question, the present statute being Chapter 219 of the Acts of the General Assembly of Maryland of 1910, and using the same language as contained in Chapter 101 of the Acts of 1904, except that the Acts of 1910 make the statute applicable both to banks and trust companies.

Acts of General Assembly of Maryland:

Acts of 1904, Chapter 101, effective March 18, 1904;

Acts of 1908, Chapter 133, effective March 30, 1908;

Acts of 1910, Chapter 219, Section 68, effective June 1, 1910; codified as Section 72 of Article XI of Annotated Code of Public General Laws of Maryland, 1924 Edition.

The statute law of Maryland relating to the liability of stockholders of banks doing a trust business has, therefore, remained unchanged from March, 1904, down to the present time.

(b) The Hagerstown Bank and Trust Company from the date of its organization conducted a trust business, as well as a banking business.

Record, page 4; Record, page 27;

Acts of General Assembly of Maryland of 1908, Chapter 410, effective April 6, 1908.

(c) No deposits were made with the Hagerstown Bank and Trust Company, and none of its capital stock was issued until it organized and began business in June, 1908.

Record, page 23.

(d) Every person becoming a stockholder or creditor of the Hagerstown Bank and Trust Company must be held to have done so with full knowledge and subject to all the conditions and liabilities affecting them, as contained in

Chapter 101 of the Acts of 1904, imposing the present form of liability complained of in this case.

Consequently, no stockholder or creditor of the Hagerstown Bank and Trust Company can complain that the provisions of the statute in question constitute an impairment of his contract with the corporation or in any other way operated in derogation of his constitutional rights.

2. THE EFFECT OF THE DECISION OF THE COURT OF APPEALS OF MARYLAND, APPEALED FROM IN THIS CASE, WAS TO DECLARE THAT THE STATUTE IN QUESTION WAS A VALID EXERCISE OF THE POWER OF THE LEGISLATURE TO DEFINE AND IMPOSE THE LIABILITY OF STOCKHOLDERS OF BANKS AND TRUST COMPANIES.

(a) There is no question in Maryland as to the power of the legislature to impose additional liabilities on stockholders of banks and trust companies over and above the minimum liability made mandatory by the Constitution of the State of Maryland.

Murphy v. *Wheatley*, 102 Md. 501.

(b) The Maryland constitutional provision relating to the liability of stockholders of banks has never been construed until the decision in the instant case, from which this appeal was taken, in which case the Court of Appeals of Maryland used the following language:

> "We have before us not a simple Act of the Legislature, and as such, open to construction under the rules of statutory interpretation, but, in reality a basic provision of the State Constitution, as amplified in administrative detail by a subsequent act of the law-making body of this State. The question, then, being one of constitutional and not statutory construction, and finding no case in which this section has been previously expounded, it is presented as one of first impression. Viewed in that aspect, the controlling force in its adjudication must be developed from an inquiry

into the underlying purpose sought to be accomplished by its terms." * * *

"It will be observed, however, that the Constitution does not fix the maximum liability to which stockholders in a banking institution, organized under the authority thereof, may be subjected; it does, though, fix the minimum liability of such stockholder, which, under its mandate, shall be 'to the amount of their respective share or shares of stock in such banking institution, for all its debts and liabilities upon note, bill or otherwise.' Nor does it limit the liability of stockholders to such debts as may have been incurred by the bank during the respective period of stock ownership. It creates a liability, as an incident to stock ownership in a banking corporation, for *all* its debts; and it is nowhere apparent that it was the intention of the framers of the Constitution to place upon creditors of an insolvent bank, or upon a receiver of its affairs, the insurmountable burden of proving, from day to day. and perhaps over a long period of years, the exact financial status of a banking corporation, as a condition precedent to the recovery of liability."

(c) The Maryland statute imposed liability upon the stockholders of banks and trust companies in language almost identical with the Federal statute imposing liability upon stockholders of National Banks.

U. S. Revised Statutes, Section 5151.

Acts of Congress, June 3, 1864, c. 106, par. 12.

Acts of Congress, December 13, 1913, c. 6, par. 23.

3. A CAREFUL ANALYSIS OF THE OPINION OF THE COURT OF APPEALS OF MARYLAND IN THE INSTANT CASE DISCLOSES NO CHANGE OR LIMITATION UPON ANY RIGHTS WHICH CREDITORS OR STOCKHOLDERS OF BANKS AND TRUST COMPANIES MIGHT HAVE UNDER THE CONSTITUTION OF MARYLAND.

(a) The decision in the instant case appealed from does not hold that the statute in question (Article 11, Section

72, Maryland Code 1924) abrogates any liability of stockholders or impairs any rights of creditors which may exist under the Maryland Constitution.

For the reasons above assigned, we respectfully submit that the Supreme Court of the United States should not take jurisdiction of this case and, therefore, move that the appeal be dismissed.

ELIAS B. HARTLE,
ROBT. H. MCCAULEY,
J. LLOYD HARSHMAN,
Counsel for Appellee.